

110TH CONGRESS
1ST SESSION

H. R. 2834

To amend the Internal Revenue Code of 1986 to treat income received by partners for performing investment management services as ordinary income received for the performance of services.

IN THE HOUSE OF REPRESENTATIVES

JUNE 22, 2007

Mr. LEVIN (for himself, Mr. RANGEL, Mr. STARK, Mr. McDERMOTT, Mr. LEWIS of Georgia, Mr. NEAL of Massachusetts, Mr. POMEROY, Mrs. JONES of Ohio, Mr. LARSON of Connecticut, Mr. BLUMENAUER, Mr. KIND, Mr. PASCRELL, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to treat income received by partners for performing investment management services as ordinary income received for the performance of services.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. INCOME OF PARTNERS FOR PERFORMING IN-**
 2 **VESTMENT MANAGEMENT SERVICES TREAT-**
 3 **ED AS ORDINARY INCOME RECEIVED FOR**
 4 **PERFORMANCE OF SERVICES.**

5 (a) IN GENERAL.—Part I of subchapter K of chapter
 6 1 of the Internal Revenue Code of 1986 (relating to deter-
 7 mination of tax liability) is amended by adding at the end
 8 the following new section:

9 **“SEC. 710. SPECIAL RULES FOR PARTNERS PROVIDING IN-**
 10 **VESTMENT MANAGEMENT SERVICES TO**
 11 **PARTNERSHIP.**

12 “(a) TREATMENT OF DISTRIBUTIVE SHARE OF
 13 PARTNERSHIP ITEMS.—For purposes of this title, in the
 14 case of an investment services partnership interest—

15 “(1) IN GENERAL.—Notwithstanding section
 16 702(b)—

17 “(A) any net income with respect to such
 18 interest for any partnership taxable year shall
 19 be treated as ordinary income for the perform-
 20 ance of services, and

21 “(B) any net loss with respect to such in-
 22 terest for such year, to the extent not dis-
 23 allowed under paragraph (2) for such year,
 24 shall be treated as an ordinary loss.

25 “(2) TREATMENT OF LOSSES.—

1 “(A) LIMITATION.—Any net loss with re-
2 spect to such interest shall be allowed for any
3 partnership taxable year only to the extent that
4 such loss does not exceed the excess (if any)
5 of—

6 “(i) the aggregate net income with re-
7 spect to such interest for all prior partner-
8 ship taxable years, over

9 “(ii) the aggregate net loss with re-
10 spect to such interest not disallowed under
11 this subparagraph for all prior partnership
12 taxable years.

13 “(B) CARRYFORWARD.—Any net loss for
14 any partnership taxable year which is not al-
15 lowed by reason of subparagraph (A) shall be
16 treated as an item of loss with respect to such
17 partnership interest for the succeeding partner-
18 ship taxable year.

19 “(C) BASIS ADJUSTMENT.—No adjustment
20 to the basis of a partnership interest shall be
21 made on account of any net loss which is not
22 allowed by reason of subparagraph (A).

23 “(D) PRIOR PARTNERSHIP YEARS.—Any
24 reference in this paragraph to prior partnership

1 taxable years shall only include prior partner-
2 ship taxable years to which this section applies.

3 “(3) NET INCOME AND LOSS.—For purposes of
4 this section—

5 “(A) NET INCOME.—The term ‘net in-
6 come’ means, with respect to any investment
7 services partnership interest, for any partner-
8 ship taxable year, the excess (if any) of—

9 “(i) all items of income and gain
10 taken into account by the holder of such
11 interest under section 702 with respect to
12 such interest for such year, over

13 “(ii) all items of deduction and loss so
14 taken into account.

15 “(B) NET LOSS.—The term ‘net loss’
16 means with respect to such interest for such
17 year, the excess (if any) of the amount de-
18 scribed in subparagraph (A)(ii) over the amount
19 described in subparagraph (A)(i).

20 “(b) DISPOSITIONS OF PARTNERSHIP INTERESTS.—

21 “(1) GAIN.—Any gain on the disposition of an
22 investment services partnership interest shall be
23 treated as ordinary income for the performance of
24 services.

1 “(2) LOSS.—Any loss on the disposition of an
2 investment services partnership interest shall be
3 treated as an ordinary loss to the extent of the ex-
4 cess (if any) of—

5 “(A) the aggregate net income with respect
6 to such interest for all partnership taxable
7 years, over

8 “(B) the aggregate net loss with respect to
9 such interest allowed under subsection (a)(2)
10 for all partnership taxable years.

11 “(3) DISPOSITION OF PORTION OF INTEREST.—
12 In the case of any disposition of an investment serv-
13 ices partnership interest, the amount of net loss
14 which otherwise would have (but for subsection
15 (a)(2)(C)) applied to reduce the basis of such inter-
16 est shall be disregarded for purposes of this section
17 for all succeeding partnership taxable years.

18 “(4) DISTRIBUTIONS OF PARTNERSHIP PROP-
19 ERTY.—In the case of any distribution of appre-
20 ciated property by a partnership with respect to any
21 investment services partnership interest, gain shall
22 be recognized by the partnership in the same man-
23 ner as if the partnership sold such property at fair
24 market value at the time of the distribution. For
25 purposes of this paragraph, the term ‘appreciated

1 property’ means any property with respect to which
 2 gain would be determined if sold as described in the
 3 preceding sentence.

4 “(c) INVESTMENT SERVICES PARTNERSHIP INTER-
 5 EST.—For purposes of this section—

6 “(1) IN GENERAL.—The term ‘investment serv-
 7 ices partnership interest’ means any interest in a
 8 partnership which is held by any person if such per-
 9 son provides (directly or indirectly), in the active
 10 conduct of a trade or business, a substantial quan-
 11 tity of any of the following services to the partner-
 12 ship:

13 “(A) Advising the partnership as to the
 14 value of any specified asset.

15 “(B) Advising the partnership as to the
 16 advisability of investing in, purchasing, or sell-
 17 ing any specified asset.

18 “(C) Managing, acquiring, or disposing of
 19 any specified asset.

20 “(D) Arranging financing with respect to
 21 acquiring specified assets.

22 “(E) Any activity in support of any service
 23 described in subparagraphs (A) through (D).

24 For purposes of this paragraph, the term ‘specified
 25 asset’ means securities (as defined in section

1 475(c)(2) without regard to the last sentence there-
 2 of), real estate, commodities (as defined in section
 3 475(e)(2))), or options or derivative contracts with
 4 respect to securities (as so defined), real estate, or
 5 commodities (as so defined).

6 “(2) EXCEPTION FOR CERTAIN CAPITAL INTER-
 7 ESTS.—

8 “(A) IN GENERAL.—If—

9 “(i) a portion of an investment serv-
 10 ices partnership interest is acquired on ac-
 11 count of a contribution of invested capital,
 12 and

13 “(ii) the partnership makes a reason-
 14 able allocation of partnership items be-
 15 tween the portion of the distributive share
 16 that is with respect to invested capital and
 17 the portion of such distributive share that
 18 is not with respect to invested capital,

19 then subsection (a) shall not apply to the por-
 20 tion of the distributive share that is with re-
 21 spect to invested capital. An allocation will not
 22 be treated as reasonable for purposes of this
 23 subparagraph if such allocation would result in
 24 the partnership allocating a greater portion of
 25 income to invested capital than any other part-

ner not providing services would have been allocated with respect to the same amount of invested capital.

“(B) SPECIAL RULE FOR DISPOSITIONS.—

In any case to which subparagraph (A) applies, subsection (b) shall not apply to any gain or loss allocable to invested capital. The portion of any gain or loss attributable to invested capital is the proportion of such gain or loss which is based on the distributive share of gain or loss that would have been allocable to invested capital under subparagraph (A) if the partnership sold all of its assets immediately before the disposition.

“(C) INVESTED CAPITAL.—For purposes

of this paragraph, the term ‘invested capital’ means, the fair market value at the time of contribution of, any money or other property contributed to the partnership.”.

(b) APPLICATION TO REAL ESTATE INVESTMENT

TRUSTS.—Subsection (c) of section 856 of such Code is amended by adding at the end the following new paragraph:

“(8) EXCEPTION FROM RECHARACTERIZATION

OF INCOME FROM INVESTMENT SERVICES PARTNER-

1 SHIP INTERESTS.—Paragraphs (2), (3), and (4)
2 shall be applied without regard to section 710 (relat-
3 ing to special rules for partners providing investment
4 management services to partnership).”.

5 (c) CONFORMING AMENDMENTS.—

6 (1) Subsection (d) of section 731 of such Code
7 is amended by inserting “section 710(b)(4) (relating
8 to distributions of partnership property),” before
9 “section 736”.

10 (2) Section 741 of such Code is amended by in-
11 serting “or section 710 (relating to special rules for
12 partners providing investment management services
13 to partnership)” before the period at the end.

14 (3) Paragraph (13) of section 1402(a) of such
15 Code is amended—

16 (A) by striking “other than guaranteed”
17 and inserting “other than—

18 “(A) guaranteed”,

19 (B) by striking the semi-colon at the end
20 and inserting “, and”, and

21 (C) by adding at the end the following new
22 subparagraph:

23 “(B) any income treated as ordinary in-
24 come under section 710 received by an indi-

1 vidual who provides a substantial quantity of
2 the services described in section 710(c)(1);”.

3 (4) Paragraph (12) of section 211(a) of the So-
4 cial Security Act is amended—

5 (A) by striking “other than guaranteed”
6 and inserting “other than—

7 “(A) guaranteed”,

8 (B) by striking the semi-colon at the end
9 and inserting “, and”, and

10 (C) by adding at the end the following new
11 subparagraph:

12 “(B) any income treated as ordinary in-
13 come under section 710 of the Internal Revenue
14 Code of 1986 received by an individual who
15 provides a substantial quantity of the services
16 described in section 710(c)(1) of such Code;”.

17 (5) The table of sections for part I of sub-
18 chapter K of chapter 1 of such Code is amended by
19 adding at the end the following new item:

“Sec. 710. Special rules for partners providing investment management services
to partnership.”.

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